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## Perspectives on law and justice depicted in Muroki Ndung'u's *A Friend of the Court* (1994)

Japheth Langat<sup>1\*</sup>, Selline Oketch<sup>1</sup> & Diana Mutuku<sup>2</sup>

<sup>1</sup> Department of Languages, Literature and Communication, Catholic University of Eastern Africa, Kenya

<sup>2</sup> Department of Education, Kabarak University, Kenya

Correspondence: [kipngenoh@gmail.com](mailto:kipngenoh@gmail.com)

 <https://orcid.org/0000-0001-7696-0620>

#### Abstract

One of the subjects of literary fiction is the law. Outside the world of fiction, law occupies a grand position and justice is underpinned by a legal process. This study sought to determine the different perspectives on Kenyan law depicted in Muroki Ndung'u's novel *A Friend of the Court*. The research was guided by postmodernist literary theory, particularly Lyotard's contestations on grand narratives, Derrida's binary oppositions, contradictions in language use as founded in Saussurean philosophy and fiction as representation of the unconscious. Content analysis was used, relying on a close reading of the selected novel to collect primary data. Secondary data was obtained from a review of published works on law and literature, including Kenyan daily newspapers, which helped to contextualize issues in the study. In his novel, Muroki Ndung'u shows how in Kenya there is tension between politics and the law. Although law is a product of political processes, namely public debate and consensus, the processes of drafting, amendment and promulgation, implementation and enforcement of the constitution is rife with political overtones. For this reason, Ndung'u lampoons the chaotic nature of Kenya's judicial processes in his work. The fact that his novel is politico-legal in itself is symbolic of the confusion between law and politics in the Kenya he represents in the novel. The study contributes to the body of knowledge on the relationship between literature and the law and the contest between grand and marginalised narratives.

**Keywords:** *A Friend of the Court*, perspectives, law, justice, Muroki Ndung'u

## 1.0 Introduction

The closing remarks of *Edison Force*, the 2005 American film written and directed by David J. Burke, come from an investigative journalist (narrated by the renowned Hollywood actor Morgan Freeman), Pollack (played by Justin Timberlake), who says: “Justice is a lot like journalism; sometimes the most important questions are the ones you choose not to ask.” This statement inspires a new perspective on the relationship between justice, as conceived in law, and justice as conceived in other areas of knowledge such as journalism and art. The film, as a genre of art, depicts the limits of what we consider as justice in the legal sense of the word vis-à-vis criminal law as served through a defined system, called the judiciary. In this way, the film inspired this research to contemplate about the relationship between the law and literature, especially within the Kenyan context.

According to Luna (2009), criminology has much to offer criminal law and procedure; but there are limits to this endeavour, such as when public policy is distorted by powerful emotions that ignore the lessons of legal doctrine and social science. Luna’s paper offers one of the responses in such circumstances, which involve expanding the interdisciplinary relationship to include literary and cultural materials usually associated with the humanities. Accordingly, literary as well as cultural materials “...can inspire the public imagination in ways that law and criminology cannot, at times offering an alternative narrative to counter emotion-driven claims of necessity, for instance, and raising the exact type of questions that legal doctrine and social science can help answer” (Luna, 2009, p. 71). What emanates from this study is the need to explore the “alternative narratives” on law and analyse some of the “exact types of questions” raised about law and justice and the Kenyan context is a fertile imaginative platform.

This comes in through the concept of law as an art, in this case Kenyan law being represented in the artistic works authored by a Kenyan lawyer, Muroki Ndung’u. The focus is on the meaning of law and justice according to the characters involved in the texts and according to the outcomes as pursued across the plot of the stories in the texts. The study, however, does not indulge in a comparative analysis of the law or its interpretations in the texts and the actual law, say, in Kenya’s constitution. However, it attempts to shed light on the general attitude and understanding of legal issues by the Kenyan masses.

The social need of this study comes from the fact that literature is part of human life. It depicts humanity as it is in its context and, by so doing, helps it realize what it ought to be. What is Muroki Ndung’u trying to reflect about Kenya’s society and its perception of the law? And what is he trying to accomplish by such a depiction? The law also seeks to prescribe to society what it ought to be and provides ways of dealing with the deviation from this agreed-upon (or defined) state of life. In this way, the law in theory becomes a grand narrative of life, but one that is challenged by the deviation, i.e. by crime. A further challenge also comes from the manner in which the said deviation is resolved, at times without following the law to the letter because of the extenuating social issues. The present study attempted to show how these issues interfere with the pursuit of justice through the law in Kenya as depicted in Muroki Ndung’u’s *A Friend of the Court* (2004).

## 1.1 Perspectives on the Law and Justice Depicted in Literary Texts

Brooks and Gerwitz (1996) argue that literary works trivialize the law in their representation of legal issues. They observe that “in its least impressive forms, this sort of work [i.e. literary works on law] can indulge in facile moralizing about law, using as a springboard a literary work whose focus on law is marginal and whose moral complexity is reduced to a simple humanistic message” (p. 20). Of course, it is important to consider that while the subject of literature is society, literature does not always have to be subject to society, and by extension, to the law as a social phenomenon. Therefore, the extent to which literature depicts a social phenomenon, such as law, can only point to the truth as it is and/or as it ought to be. Such depiction is not trivialising of law as such.

Luna (2009) suggests that whether his didacticism is overt or lies beneath the surface, the writer

(of legal fiction) is not duty-bound to moral neutrality. According to Luna, viewpoints are inherent in literary works, which may advance objectionable positions and practices just as easily as those considered normatively justifiable; and literature can also distort the reader's perception, depicting the nature of life with simplistic causal chains, or intricate layers of complexity, or an utter randomness of events; its intoxicating effects may even stimulate a certain promiscuity of argument.

Glen (2011) has also examined the debates on the portrayal of the law in literature. He was concerned with providing a proper response to scholars of law who condemn literature for giving inaccurate representation of the law. According to Glen, literature does not provide an inaccurate depiction of the law, but it gives voice to the many perspectives that people take when it comes to the law. He adds that, together, the multiple perspectives of the law provide a holistic image of what the law actually represents in a given context. This view inspired the present research to examine how the different perspectives on law depicted in Muroki Ndung'u's *A Friend of the Court* represent the actual view of law and justice in the Kenyan society.

Odden (2017) undertook a study of Anthony Trollope's novel, *The Way We Live Now*, to explore features of white-collar crimes in the Victorian era. The novel examines financial crimes and the pursuit of justice from a legal perspective. The story revolves a railway promotion event that transforms many individuals in the novel. According to Odden, in *The Way We Live Now*, Trollope depicts how white-collar crimes impact the livelihoods of others, especially in an increasingly capitalistic system. He argues that criminals, especially those in high offices in society, are more ruthless than petty criminals since their unlawful acts affect a majority of the people. Odden further observes that, through satire and ridicule, *The Way We Live Now* offers a means by which alternative (literary or poetic) justice may be realized for victims of criminals who act with impunity. This is a testament of the fact that legal fiction as a literary genre can offer an alternative view of the law, an approach that appeals and enlightens the masses who may not have the technical understanding of the law. For this reason, the present study examined how Muroki Ndung'u, in *A Friend of the Court*, provides different perspectives on the law in the Kenyan context.

In his study of Lawrence Joseph's *Lawyerland* (2004), Posner (2009) observes that the non-fiction texts elucidate the perspective of lawyers about the law. He notes that lawyers have different motivations in their engagements with the law. First, their desire to become lawyers was unique. Second, in every case, the lawyer has a stake to protect. Some of these stakes are right while others are wrong; either way they influence how the lawyer prosecutes or tries the case. Third, external factors such as politics or personal stakes could drive lawyers to take positions they do not believe in about a case.

Thompson (2012) has examined texts that attempt to portray the law from different perspectives. He cites Upton Sinclair's *The Jungle* (1988) as a good example of the portrayal of the law from an outsider's perspective. According to Thompson, the story in *The Jungle* follows the life of a plaintiff (Jurgis) trying to defend his assault of a man who slept with his wife. Considering that Jurgis is sentenced despite providing valid reasons for the assault, Thompson concludes that the law can be unfair even when it is properly interpreted and applied.

Husa (2021) argues that literature provides a means through which law may be studied culturally. In his study, he examines the intricacies of adapting legal problems into literary stories and vice versa, that is, how literary stories are crafted to reflect or at least remain faithful to the principles of law. Husa observes that authors of legal fiction literary texts engage in legal transplantation. This transplantation entails the imagination of legal problems and solutions through storytelling. According to Husa, literary works about the law provide a less restricted intellectual space to ask and explore answers to such questions as: what is law, how does it work, how do we acquire information about it and – most importantly – how are the answers to these jurisprudential questions reflected in contemporary culture? These questions inspired the present researcher to inquire into how Muroki Ndung'u in his novel reflects on the different perspectives on the law in the Kenyan society.

Novitasari and Titis Setyabudi (2018) discuss bravado as a character trait embodied by Darby Shaw in John Grisham's novel *The Pelican Brief*. The study observes that Shaw puts her life on the line to unravel the conspiracy that led to the murder of Supreme Court justices and her lover and professor, Thomas Callahan. Shaw is an all-round character, mostly afraid for her life but at times driven to extreme forms of risk-taking. Her constant shift between fear and bravado is driven by the deep desire for and commitment to the cause of justice, not just for her murdered lover but also for her society. The reviewed study inspired the present work to examine the approaches to the practice of law in Kenya as depicted in Muroki Ndung'u's *A Friend of the Court*. In what ways do characters in Ndung'u's novel portray courage or fear, and what motivates them to act the way they do in relation to the law? It is for this reason that the present study explored the personal narratives and motivations of characters in their approach to the law in the novel.

Luna (2009) states that, though shaped by authorial subjectivity, a good literary work does not overtly instruct the world on the "right" answers; instead, it invites the audience members to discuss the story's meaning and implications: unlike pure legal analysis, expertise and specialized knowledge are not prerequisites to the endeavour. An individual can draw his or her own conclusions, based not only on the text but also the individual's interactions with other readers and society as a whole. The implication here is that in literature, varying interpretations are allowed. Yet, this is where the law also as subject to interpretation becomes artistic. The outcome of a judicial process is a product of discourse between lawyers based on their interpretations of the position of the law on a given crime. Behind them are also their clients who wish to find a way to interpret the law to serve their best interest. The absolute definitions of such binary opposing moral concerns such as right and wrong, good and evil/bad are challenged within the lawyers' arguments.

This study sought to analyse the debates that emerge over the major cases involved in Muroki Ndung'u's *A Friend of the Court* in order to find out whether or not these binary opposing forces still hold mutually exclusive grounds or have come to merge in some form of mutual compromise. The law, indeed, can be interpreted in various ways to resolve various issues in diverse contexts. It is important to note that the acknowledgement of these interpretations as witnessed in court drama (whether real or fictive) is a sign that each interpretation posits a narrative that is significant on its own, even though the law ought to be clear and exact on what it means.

By broadening our consciousness of injustice, a good narrative has an edifying effect on the audience and can play a part in their moral education (Nussbaum, 1995). In *Poetic Justice*, Nussbaum argues that Literature "provides insights that should play a role (though not as uncriticised foundations) in the construction of an adequate moral and political theory," and it "develops moral capacities without which citizens will not succeed in making reality out of the normative conclusions of any moral or political theory, however excellent." Although literary works cannot replace moral theory and legal reasoning, they "can be a bridge both to a vision of justice and to the social enactment of that vision" (Nussbaum, 1995). As such, it is important to examine Muroki Ndung'u's vision of justice and how the characters and situations he creates in his novel serve to bring out that vision.

Rorty (1989) reiterates his scepticism that philosophical inquiry, in and of itself, can reveal the causes of or solutions to systematic injustice; but a piece of literature can do what high theory cannot: stimulate an awareness of our own prejudices and the harsh practices tolerated by society. It may convey the "kinds of suffering being endured by people to whom we had previously not attended" and the "sorts of cruelty we ourselves are capable of." This study examined what individuals undergoing various situations in the Kenyan society perceive as the role of the law in their situation in the selected novel. According to Binder and Weisberg (2000), in their work on *Literary Criticisms of Law*:

... the literary imagination can help us not only to conceive a new and better legal regime, but also to imagine what living under alternative regimes might feel like. Literature can offer a

complex, multilayered experience that transcends rigid categories, alerting us to the plurality and dynamism of the meanings we attach to social life. And a literary perspective could thereby encourage the lawgiver to eschew mechanistic regulation in favour of an open-minded pluralism, to become an empathetic, inclusive, and imaginative architect of the common good.

This “plurality and dynamism of the meanings we attach to social life”, according to the current research, comes from the various narratives that define our lives and attitudes towards normative things like the law, religion, politics, economics, environmental activism among others. These narratives that define our worldview come from our races, cultures, gender associations, personal insights, education, and religious affiliations among other sources. The same plurality and dynamism is also attached to the meaning of law and justice depending on our personal and deepest goals.

### 1.3 Problem Statement

Whether the law serves its own interest or that of individuals has always been a debate that is held more on philosophical grounds than on any other ground by scholars. However, literature (particularly legal fiction) offers a platform for staging this conflict in the day-to-day living of individuals and within the general society. In addition, legal fiction can create a platform where the complexities of law can be explained and probably practically resolved (albeit fictively). The choices made through the daily routines and the succeeding consequences are witnessed in legal fiction. Legal fiction dramatizes how individuals are rendered ambivalent by the conflicting demands of the law – conceived and pursued in universal terms – and the personal choices motivated by personal interests and needs. Consequently, people are forced to come up with their own interpretations or understanding of law and justice. Despite the obviously illuminative nature of law by literary texts, very few lawyers in Kenya have produced legal fiction texts. Perhaps the problem lies in the fact that such texts have not received much research attention as well. Therefore, this study sought to expand the growth of legal fiction as a sub-genre of popular fiction in Kenya.

Therefore, the study examined how law and justice are interpreted or reinterpreted by individuals under various circumstances in Muroki Ndung’u novel, *A Friend of the Court*. Specifically, it investigated the different perspectives taken by lawyers, plaintiffs, judges, magistrates, the police, criminals, the rich, the poor, the young and old, government and political leaders, and other institutions represented in the novel, on the law and justice in Kenya. The aim of conducting this research was to document the defining characteristics of the legal thriller as an emerging sub-genre of popular fiction as well as provide a reference point for further research on the relationship between law and literature in Kenya.

### 2.0 Methodology

The study adopted an analytical research design. The target population for the study comprised the novels authored by Muroki Ndung’u, a Kenyan lawyer. Ndung’u has written only two novels, namely *A Friend of the Court* (2004) and *A Measure of Courage* (2009). Muroki Ndung’u was chosen because he is a practicing lawyer who also happens to have produced works of fiction. Of the two novels, the researchers purposely selected *A Friend of the Court*, which represented 50% of the total population. Primary data for this research was collected using content analysis. A close reading of the primary text was done to generate primary data. Data analysis was done thematically, based on the research questions.

Theoretically, the study borrowed from the ethos of postmodernism. According to Lyotard (1979), the term postmodern refers to “the condition of knowledge in the most highly developed societies” (p. 53). He notes that the term is used among sociologists and critics to designate “the state of our culture following the transformations which ...have altered the game rules for science, [law], literature and the arts” (p. 13). This conceptualisation of postmodernism was found relevant to the current study because

Lyotard examines the condition of knowledge “in the context of the crisis of narratives” (p. xiii). The current study examined how literary strategies of narration, characterisation and drama are deployed in the representation of law and justice in the selected novels in Kenya.

### 3.0 Results and Discussion

The study views the writings of Muroki Ndung’u as stemming from and being part of the postmodern tradition, which, according to Best and Kellner (2020), are marked by an aggressive criticism of traditional culture, theory, and politics. As such, *A Friend of the Court* is part of the emerging postmodern discourses and problematics that raise issues and resist easy dismissal or facile incorporation into already established paradigms.

#### 3.1 The State is Law

The first thing that is notable in *A Friend of the Court* is that the law is what the state says it is. In the Kenya we see in the text, the state and those who run it stands out as the “autonomous individual” at the centre of “meaning and truth”. Given that these occupants of state offices are driven by selfish interests, the law then serves their agenda, not the public’s. To challenge this, i.e. to seek to apply the law rightly and justly, is considered an act of dissidence. This dissidence is defined by a law against the law of the land; the law interpreted to suit individual greed. As such, in *A Friend of the Court*, the law is not a natural given. Human rights are not inalienable; all live by the mercy of the state apparatus.

#### 3.2 Constitutional Interpretation Problem

Muroki Ndung’u, in his novel, reveals that the problem of law in Kenya is its interpretation. The law itself is neutral. However, the political elite, under the leadership of the ruling party, Union of Kenyan Nationalists (UKN), has established an unwritten meta-law of interpretation of the current weak constitution. This grand narrative of interpretation is meant to counter all others. In practical sense, the *New Constitution* of the land is the UKN ideology. As such, the law is used to keep those in power in their seats so that they can continue to siphon wealth from state coffers.

The reactionary group that is branded as dissidents by the ruling party, UKN, wants the law to be followed to the letter. According to them, “...their constitutional rights of speech, assembly and association had been infringed upon by the State’s criminalisation of any form of dissent” (p. 4). The dilemma here is that the ruling party has usurped the sovereignty of the state, and majority of the masses are too ignorant to see the distinction between the two. As such, the UKN ideology or manifesto is superior to the constitution of Kenya. By fighting to maintain the one-party system, the UKN political class is in essence trying to maintain the erroneous supremacy of its ideology over the constitution.

#### 3.3 Conflict between Patriotic or Humane and Financial Interests

In *A Friend of The Court*, Rosaly Gakeni is on a quest to find and live up to the higher standards of the practice of law. She quits a lucrative position in a prominent law firm in Nairobi and relocates to Nakuru to “start all over again” (p. 1). Like Darby Shaw I John Grisham’s *The Pelican Brief* (Novitasari & Titis Setyabudi, 2018), Gakeni is brave. Through her, Ndung’u (2004) examines the evolution of the law and the legal profession in Kenya. The various constitutional amendments since 1963 may be seen as attempts to go back to the drawing board insofar as the practice and purpose of law are concerned. Gakeni’s approach to the law is informed by her deep sense of loyalty to home or patriotism. This fact is punctuated by her move to Nakuru, her home; to her, “home is where one returns to retrace one’s steps” (p. 1). Gakeni ends up doing pro bono work in her new law firm in Nakuru. Unlike her former bosses in Nairobi, she is more interested in serving the cause of justice than the financial rewards associated with a career in law.

Gakeni’s venture into the legal profession is inspired by her father, a retired judge. However, she

cultivated her own personal convictions about the purpose of law and the legal profession. The new environment in Nakuru sends Gakeni to a state of introspection: “What am I doing here?” (p. 5). She had almost been used to the posh office in her old firm in Nairobi, located at the twenty-first floor. The lofty firm building in Nairobi represents the social, political and economic distance between the rich lawyers and the poor people whose cry for justice often goes unheard. In Nakuru, Gakeni comes close to the poor. She learns to relate with them and she is transformed from a mere lawyer to an activist. She learns to adopt her father, Mr Ndarama’s, mantra in his practice of law: “To be able to live with myself” (p. 5), to be a lawyer with a clean conscience.

### 3.4 Intimidated Law Practitioners

Mr. Ndarama’s arrest and torture is a classic example of how the repressive state under UKN exists with impunity. Lawyers and judges are expected to serve the interests of government, especially when the state is engaged in unlawful acts. When Maitika represents Don and Githukia in court, the Senior Superintendent of Police leads a troupe of gun-wielding police officers into Gakeni and Co. to intimidate the two lawyers against acting against the interests of the state (p. 76-78). Gakeni wonders why “the Special Branch [are sent to do] the work of the regular police” (p. 82). Nevertheless, Gakeni is not intimidated. She does feel a little fear, which is one reason she has learnt to avoid legal “matters with political connotations” (p. 82). She knows that politics distort the course of justice.

The police consider torture an expedient way to discourage dissent against the government. Senior Superintendent is disappointed that he can no longer use torture to force suspects to tell the truth or plead charges. The UKN government “prescribed and sanctioned” (p. 78) torture and had set aside “a building in Nairobi’s central business district, to ...cure all who were brought to it of the disorder called dissent” (p. 78-79). Although presently the state does not officially sanction torture, it secretly permits its use and the “Higher Authorities” are quick to disavow all knowledge of such things when the public is made aware of their existence.

Law makers are also not spared from state intimidation. A member of parliament, like Hon Wamarema of El Molo, is more loyal to his party than to his constituents. This fact attests to the lack of independence of branches of government. The executive, as manned by the ruling party UKN, controls the activities of the judiciary and parliament, despite Kenya being a *de jure* multiparty democracy. A politician who shows disloyalty to the party and government is steadily sidelined and pushed out of office. Fearing for loss of power and prestigious office, or even for his life, a politician is forced to bow to the ruling party and support politics that harm citizens. Ironically, in the end, Wamarema is fired as his opponent, Waririria, defects from the opposition party, One Kenya Party, to UKN.

### 3.5 Arrogance and Incompetence among Investigating Officers

Gakeni laments that most cases in Kenyan courts are dismissed easily due to the arrogant incompetence of the investigating officers (p. 14). She notes that, often, valid cases brought before the court are dismissed due to poor investigations. Yet, on her part, she believes it is immoral to revel in arguments for dismissal of cases merely on the grounds of poor investigations. She believes justice should be done for all parties involved in a case. It is ironical that, later when Maitika reviews Don’s files at Gakeni’s office, he concludes that Don had been “just another gangster lucky enough not to have an airtight case levelled against him” (p. 33). These sentiments suggest that many serious criminal cases were often lost or dismissed in the Kenyan legal system due to the shoddy work of investigating officers or prosecutors. Maitika is aware of the incompetence of the police, the Special Branch and the prosecution. Unlike Rosaly, however, he is willing to exploit this incompetence to secure justice for his clients. This incompetence is made salient in the case of Don Mwihoti and others versus the State on allegations of executing warlike undertakings in Rift Valley. As he listened to Mr. Prosecutor read the charges, Maitika thinks to himself: “The charges did not read like the usual dry-toned ones drafted by the police. Some inspiration had

gone into their drafting... same prompting from some high rung in the political ladder had also played its part” (p. 48). The police incompetence is not a question of lack of training. It arises from sycophancy and fear. In the UKN regime, police officers cannot undertake their constitutional mandate; they merely serve political interests.

The incompetence of the police extends to their capacity to securely transport prisoners. This is made evident when a group of gangsters with superior guns surround the prisoner transport vehicle and seek to abduct Don and Githukia. The author uses vivid description to demonstrate how the police are easily overwhelmed by the gangsters. The police are poorly equipped compared to gangsters. This speaks a lot about the priorities of government insofar as police preparedness to combat crime is concerned. It also underscores a proliferation of advanced and illegal guns in Kenya.

The police use cliché phrases to assure the public of their safety and to paint a picture of a functioning disciplined force. When Don and Githukia escape, the police chief issues a statement assuring the public that “no stone would be left unturned” and that here “would be no compromising on the security of Kenyans (p. 76). He adds that the “police were pursuing useful leads and were definitely closing in on the dastardly escapees” (p. 76). Of course, the police chief does not provide real evidence to prove whether or not these statements are true. The police are also portrayed as an angry lot. They act in bad faith. They do not love their job since, as already shown, they are poorly trained, remunerated and equipped. This explains the rage with which they conduct arrests or raids on suspects. They do not read Miranda rights to the arrestee, either because they themselves, on account of poor training, do not know about these rights and the proper procedures when conducting arrests, or because they presume suspects are already guilty and, therefore, have no rights in the first place.

In most cases, the police are reluctant to investigate cases that carry political undertones and for good reasons. They already know the instigators of such problems, some of whom are their seniors or colleagues. This is evident in the case involving Isabella Worthington and some local residents of El Molo who had posted threats on the white settlers urging them to vacate or face consequences. Isabella tells Maitika that she had reported the threats to the police. The police use vain excuses to avoid investigating the matter: “They keep pleading that all their vehicles are grounded and won’t come even after we offer them our own. Press them and all they’ll say is they are investigating the issue, that they’ve opened a file and anyone with information should forward it to them” (p. 102). It is ironic that the police do not go out to investigate but would rather that the citizens bring them information about cases that are reported.

### **3.6 Corruptible and Incompetent Lawyers**

Maitika is a morally flexible lawyer. He is willing to bend the law for a good end. However, his morally loose interpretation of the law is informed by the deep disillusionment he has with his society. His approach to the law is a form of protest, as if desiring to do away with the law altogether and let anarchy reign for a moment, then, out of such chaos, perhaps society would see the necessity of the law. He embodies the author’s social commentary on public complacency with the law and judicial systems. People have learned to take for granted the value of the rule of law and cannot protest when the state blatantly disregards the law and the constitution. As such, Maitika has lived up to his head master’s wishes: “Whatever you will become eventually, it had better be an endeavour, legal or otherwise, that is mostly accomplished by one whose inner drive is covered by an innocent exterior” (p. 19).

Maitika’s greatest admiration is Donald Mwihoti, the famed criminal mastermind and Gakeni’s last client in her old firm in Nairobi. Maitika wishes to meet Don, so he can “look into the man’s eyes and judge for himself, independently of the evidence, the man’s guilt or innocence” (p. 21). Evidently, Maitika senses a kindred spirit in the rebellious character of Don. To Maitika, in a country where lawlessness and impunity is sanctioned at the upper echelons of the state, a lawyer in pursuit of justice cannot win justice for his clients who are opposed to the government by following due process. The



end justifies the means becomes the *modus operandi* of legal practice in such circumstances. As Maitika explains to Njenga, “I do what needs to be done, however it can be done and with whomever I must do it with. The end crowns the work” (p. 191).

As Gakeni scrutinizes Maitika and his papers during their first encounter, the author uses stream of consciousness to reveal how sleazy and incompetent lawyers are created. According to Gakeni, such lawyers are, first, a result of a broken legal education system. In such systems, law students spend more time cramming than understanding and relating with legal precepts and practices. As lawyers finally, such trainees do not know how to apply the knowledge they gained from law school. They copy or rely on other lawyers to undertake their legal work. They are not creative as they have never learned to think for themselves. They take pride in the tag of being lawyers but cannot live up to the demands of the job. Such lawyers are prone to manipulation by both other lawyers and criminals. They have no respect for authority and office of the legal profession. Ultimately, they acquire little useful experience in the practice of law. Ironically, Maitika proves to be the kind of lawyer Gakeni needs to make her firm stable. She and Maitika complement each other because he is her alter ego.

### 3.7 The Ideal Activist Lawyer

In *A Friend of the Court*, Maitika is described as a crusader. He has no passion for representing ‘hoodlums’ like Don Mwihoti. His passion is to use the law to cause real change. Through his stream of consciousness, while he prepares to head to Nakuru town to drop his papers in search of a job in various law firms, Ndung’u reveals some of the characteristics of an ideal activist lawyer. Such lawyers are driven by passion and desire for a good name and legacy. They are not afraid of consequences. They are willing to make costly sacrifices. They take on cases that critical of the authorities. Their words gain them fame, and, since they are not in it for the money, their bank accounts are almost always empty since activism has no payday. Yet, Maitika recognizes that the world he lives in makes it impossible to be an ideal activist lawyer. Ndung’u reveals how lawyers are afraid to take up social causes through activist legal practice since this type of lawyering has no financial rewards. Nevertheless, it is ironic that Maitika would consider himself the ideal activist lawyer. His character sharply contrasts Gakeni’s, characterised by high moral standing and strict adherence to the letter of the law. Despite this contrast, Gakeni recognizes the astute lawyer in Maitika. She thinks Maitika “is a born troublemaker... one who even after the horrors of arrest, torture and confinement would still have enough fight left in him to make more of a nuisance of himself” (p. 82). She associates Maitika’s approach to the legal practice with her father’s mantra of being able to “live with himself” (p. 82).

### 3.8 Public Fear and Silence are Enemies of Justice

In *A Friend of the Court*, the members of the public are portrayed as being informed of the oppressive nature of the UKN government. However, citizens are afraid to report crimes for fear of retaliation from the perpetrators of crime. There are no laws on witness protection under the UKN government. Njenga, son of Perpetua, is afraid to testify against the high-profile secret planners of civil strife in El Molo. “I...shall work out of court having testified against certain people and... Who shall I turn to when reprisals come against me, my family and others in this land?” (p. 160). The government is by extension a criminal enterprise that can kill those who disclose the secrets of their misdeeds. Just as Maitika is afraid to report on Don, so are the citizens too afraid to speak out against blatant injustices committed by those who are supposed to uphold the law and the constitution. Maitika laments that “these selfsame citizens had elected silence in the place of helpful speech” (p. 134). Gakeni is sympathetic towards the people of El Molo who have been cowed to silence. While they can confirm that certain individuals are fomenting civil strife, they cannot name names. For Gakeni, “Silence... has its merits; silence accords a people peace where speech such as she hoped to coax out of them... would not” (p. 135). The organizers of civil strife are so elusive or dangerous that the public cannot single out any of them in person. For

this reason, Gakeni thinks that these orchestrators of anarchy, who everyone knows to be secret agents of government or UKN party, have turned the locals into “Appeasers of a formless chimera” (p. 135).

Although Gakeni has chosen to take the El Molo or Worthington’s case “*pro bono publico*” or, as Maitika puts it, “*Pro patria*”, she struggles to establish the necessary facts to have a strong case because of the silence and fear to which the members of the public have been subjected. Ndung’u uses her to underscore how such fear and silence impede or frustrate the course of justice through the legal system in Kenya. As she marvels, “The facts with which one could proceed further were either known but unrevealed or not known at all” (p. 135). It is nonetheless ironic that Maitika, her colleague, is privy to some of the facts having spoken earlier to Don. However, Maitika is more afraid of the repercussions he may incur from her boss, Gakeni, than from the police, criminals like Don and his compatriots or from politicians involved in the case. Nevertheless, Maitika is more disturbed by the silence and fear that has gripped the people of El Molo: “We came..., if not to make the peace then at least to bolden those its disruption would imperil: the weak. But the weak have been reduced mute. They shall speak nothing of what they know and therefore fear” (p. 139). It is ironic that the El Molo people cannot share the truth they know with those who are championing their rights.

### 3.9 The Dilemma of Elections and Laws in Kenya

*A Friend of the Court* is set in the heydays of first multiparty election campaigns. The main bone of contention in this election are the electorate from the Rift Valley. The UKN party considers the region its backyard. Therefore, it expects the residents of Rift Valley to vote unanimously for the party. UKN leadership claims that the very reason for embracing multiparty politics is to promote democracy in Kenya. Ideally, in a democracy, the law governs election processes, and election campaigns are conducted legally (at the right time and in the right manner) based on development issues. However, as Ndung’u reveals, UKN politicians use violence, intimidation and ethnic hate to manipulate the citizens of Rift Valley to vote for the government. In a democracy also, there is fair competition between or among opposing parties. Each is supposed to present their issues and allow the public to decide and vote freely. The reality painted in the novel is that the government wants to suppress the opposition. Political leaders from Rift Valley, such as Hon. Nathaniel Gachanjama, Hon. Ngwataniro Njuru and Hon. Jameson Mutirithia, caution opposition leaders against campaigning in the region. The media cannot be objective to provide alternative views and check on the state and opposition. It lacks independence because of muzzling by the state. Further, the state regards any form of criticism directed at it as dissidence tantamount to cause anarchy. UKN officials constantly sound alarms of fear among the public to dissuade them from listening to opposition leaders: “They are out to cause chaos and bloodshed” (p. 126). Further, election rigging, deaths and assassination are the greater signs of impunity in the highest rungs of politics in Kenya.

On their part, opposition leaders are not impeccable insofar as adherence to electoral laws is concerned. They issue threats to those with dual citizenships, such as the British-Kenyans and Asian-Kenyans, to show loyalty to the country by burning their passports. Ndung’u reveals that competitive and selfish politics of hate and violence represent the enemies of electoral justice and democracy in Kenya. Mr Mwaririria, the local aspirant for opposition party, One Kenya Party (OKP), demonstrates all the marks of a manipulative politician with no concern for the plight of the people. He is driven by greed for power. Gakeni observes Mwaririria and concludes that, “this champion of a menaced people was no longer spurred by their condition presently and in the immediate future” (p. 137). Opposition has become mere politics of sabotage of government; leaders of the opposition do not offer constructive criticism and alternative ways to develop the country. Their aim is to make the country ungovernable for UKN. Ironically, therefore, government and its politics have actually become the harbingers of anarchy instead of the upholders of the rule of law.

Maitika is concerned that in the uncertain state of things, where government and opposition

leaders do not represent the best options for the people, the only hero who seems to speak the truth and seek to unearth the ills of government is a “known and self-confessed gangster”, namely Don Muihoti (p. 128). Indeed, the omniscient narrator’s tone resonates well with Maitika’s admiration for Don. Don is portrayed as a tactful and cunning criminal who is able to elude security officers with ease (p. 140). Don is thus symbolic of an idea of justice that cannot be prevented or suppressed. He is the antithesis – if not the cure – of an oppressive and illegitimate government. Therefore, juxtaposed with the political leaders of the day, Don stands out as not just a friend of the court; he is also a friend of the nation, a patriot with no clean record of his own. Through Don, Ndung’u holds up a mirror to all Kenyans, to notice that the whole nation has an ugly past to contend with even as it seeks a more democratic and just society.

Ndung’u’s portrayal of the crumbling public trust in UKN leadership augers well with the view of postmodernist writers. Postmodernism describes the condition of knowledge and culture marked by incredulity with metanarratives. Seen in this light, the introduction of multiparty democracy represents a deconstruction or disintegration of single-party states. It also means the opening of social spaces for multiple voices. By extension, Ndung’u (as a lawyer) hints at the fact that the law is subject to interpretation, based on the circumstances. The entire process of investigation, prosecution and court proceedings constitute this democratic approach to the law. There is room to argue, to listen and allow every side to “have their day in court” (p. 332). The criticism of existing laws is also reflective of this postmodernist condition. It further opens room for constitutional amendments, which itself marks the steady growth of society in the direction of justice.

#### 4.0 Conclusion

In *A Friend of the Court*, Muroki Ndung’u paints a picture of a Kenyan legal system that is chaotic. The government is the oppressor instead of being the liberator of the people. For this reason, those in government are the real law breakers. Meanwhile, the most notorious criminal – Don Muihoti – has become the crusader for justice. He helps the lawyers to unravel the truth about the UKN government and to display it in public. This sort of falsification of the law becomes Ndung’u’s way of deconstructing the long-unchallenged metanarrative of Kenyan law. Ndung’u contests the capturing of the judicial system and processes by the ruling elite. Those in government exercise impunity. They have usurped the constitution and replaced it with the ruling party’s manifesto. They have redefined lawlessness as any act of criticism or opposition to their ideology, which itself is flawed and oppressive. Therefore, the author manages to predict how the change in constitution is not sufficient to transform Kenya if it is not accompanied by a sanitization of political tactics and rhetoric for good.

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